THE WAITING PERIOD IN AMERICAN COMPENSATION ACTS

I. INTRODUCTION

The accepted philosophy of compensation legislation requires compensation of all accidents irrespective of fault. Whether the law contains compulsory requirements concerning insurance, or not, compensation is essentially an insurance provision against losses sustained, whether large or small. The general though by no means universal provision for a waiting time in the American compensation acts requires therefore a definite argument to support it.

By "waiting time" is meant a definite time after the accident during which, quite arbitrarily, compensation is denied. The technically accepted term is therefore a misnomer; for "waiting time" means not only the period during which the injured employee is required to wait for his compensation; it means also that during this interval he is not paid at all. This definition, however, requires some qualification. Since a very large proportion of industrial accidents reported result in early recovery, many of the injured have recovered and are back at work at the time of expiration of the waiting period. These, in accordance with the waiting-period provision, do not receive any compensation. The other injured, who have suffered comparatively graver accidents, acquire a right to compensation at the moment of the expiration of the waiting period. But as to the extent of their right at the moment laws differ materially. In some acts the right to compensation does not revert back. But in other acts the waiting period is waived entirely for the more serious accidents, the right to compensation reverting back to the beginning of the disability. Other modifications of minor importance also occur, which will be explained in due place.

The arguments usually advanced in defense of some waiting period, whether exclusively relating to minor accidents or to the initial stage of all accidents, are essentially as follows:

1. The administrative argument. A very large proportion of all accidents are of such a nature that recovery is very rapid. The existence of a waiting time therefore saves an enormous amount of administrative work in taking care of the thousands of inconsequential injuries. The administrative handling of all cases requires a certain minimum effort and cost. This administrative expense is proportionally small in the case of a fatal or serious injury. But in the case of a claim for one or two days' loss of time the proportion between compensation and expense is very large.

In several European countries this argument is further strengthened by the existence of a compulsory sickness-insurance system, or one which when voluntary receives substantial encouragement and financial subsidy from the governmental authorities. It appears very much simpler in such cases to have the minor cases in the care of sick benefit funds.

Further justification for the denial of the essential right to compensation because of administrative considerations is found in the smallness of the economic loss involved. It is assumed that the average worker is able to suffer the loss of two or three days' wages without serious detriment to his economic equilibrium.

2. The malingering argument. It is very frequently argued that the absence of a waiting period, and the grant of compensation for injuries of short duration, would lead to an increase of malingering. Encouragement would be given to nursing of the slightest scratch, and even a day lost because of a debauch might be ascribed to an industrial injury. Thus Mr. Sherman places "a provision for the payment of compensation from the date of disablement without the intervention of a waiting period as the very first of the 'practices or provisions of law' which afford opportunities for or promote malingering."[1]

3. The "limited fund" argument. A curious argument occasionally quoted in this country is based upon what may be designated as the "limited fund" theory of compensation, somewhat

[1] T. P. Sherman, *Malingering under Workmen's Compensation Laws:* "The provision of half-pay commencing immediately after injury reduces the incentive to keep at work or to return to it promptly in such cases to a point where it often becomes inoperative and thereby gives rise to what is probably the most expensive although the least immoral form of malingering."

akin to the wage fund theory.[1] According to this theory it is desirable to limit the amount of compensation for minor injuries, because in *this way* (and this is the essential part of the theory) a more generous treatment of graver injuries will be possible. At least in one state (California) this theory, as will be shown presently, has already led to definite legislative action. There is no doubt that even a very short waiting period materially reduces the number of accidents requiring the payment of compensation. According to the data of the Massachusetts Industrial Accident Board,[2] 43 per cent of all accidents reported resulted in disabilities which did not extend beyond one day. According to the Standard Accident Table,[3] of 100,000 tabulatable accidents, i.e., accidents lasting over one day, 37,225 did not last over seven days. Out of 100 accidents reported, therefore, 43 would not come even under the definition of a tabulatable accident, and, of the remaining 57, 37 per cent or 21 would not extend beyond the first week. The establishment of one week as a waiting period would therefore eliminate 65 accidents out of each 100, while a two weeks' waiting period would further eliminate 14 accidents, leaving some 22 per cent to be compensated. This seems to agree with the experience of American insurance companies, which find that less than 25 per cent of accidents develop into claims under a two weeks' waiting period, and from 35 to 40 per cent under a one-week waiting period.

It is possible, however, to exaggerate the degree of relief thus obtained for the administrative machinery of the compensation law. Unless an accident is altogether trivial at the time of its occurrence it is impossible to foretell with any degree of certainty whether it is likely to extend over two weeks. If the needless prolongation of disabilities is to be prevented, reasonable control over these minor accidents is desirable, and the amount of additional administrative effort implied in the payment of compensation is slight as compared with that required to grant the necessary medical care. In any case, it must be pointed out that the argu-

[1] This has been discussed by the writer in connection with medical aid. See *Journal of Political Economy*, June, 1917, p. 613.

[2] *First Annual Report of the Massachusetts Industrial Accident Board*, p. 8.

[3] See Standard Accident Table, p. 38.

ment of administrative simplicity does not apply to the waiting period in cases extending beyond that period.

That the combination of systems of accident and sickness insurance, such as exists in several European countries and is best exemplified by the familiar German law, presents certain administrative advantages must be readily admitted. Even in Germany, however, occasions frequently arise when it is highly desirable for the accident-insurance carriers to obtain control over the case long before the preliminary period has expired;[1] but, of course, the entire situation is not at all paralleled in the United States, where substantial sickness insurance among wageworkers is rather exceptional.

The second argument for a waiting period, namely, the danger of malingering in the absence of such a period, is often exaggerated, especially if the waiting time extends beyond a few days. Indeed, as we shall presently see, many provisions in regard to the waiting period are unfortunately so framed as to prove, perhaps somewhat unexpectedly, a direct stimulus to malingering. It is a common observation among public officials administering compensation acts that the tendency to malingering manifests itself rather in an effort to prolong the time for which benefits have been paid than in claiming benefits for petty injuries, and is, therefore, found more frequently in injuries of longer duration. This observation appears reasonable, since in compensation we are not dealing with the lazy and unemployable; these do not suffer industrial injuries. Malingering, as well as so-called pension hysteria, is rather a result of the demoralization brought about by an enforced period of idleness. The wageworker is not used to a vacation, and an enforced one with compensation is often unsteadying in its effects.

II. THE EXPERIENCE OF OTHER COUNTRIES

The experience of countries which preceded the United States in compensation legislation presents two distinct tendencies. Probably these may be best described as (1) the European tendency and (2) the tendency of the British colonies. Of the forty-six compensation acts outside of the United States, analyzed in the

[1] See the writer's discussion of medical aid (*Jour. of Pol. Econ.*, 1917, p. 729).

latest government publication on the subject, some twenty-one relate to European countries and sixteen to British colonies in America, Australia, or Africa.[1] The waiting-period provisions of the European acts are given in a descending scale in Table I.

TABLE I

WAITING PERIODS IN COMPENSATION ACTS OF EUROPE

Denmark*	13 weeks	Norway §	3 days
Sweden*	60 days	Switzerland	2 days
Great Britain†	1 week	Netherlands¶	2 days
Belgium‡	1 week	Italy, Lichtenstein, Portugal, Rumania, Russia, Servia, Spain	None
Finland	6 days		
France	4 days		
Greece	4 days		
Germany	3 days		
Hungary	3 days		
Luxemburg	3 days		
Austria §	3 days		

* Subsidized voluntary sickness insurance cares for minor accidents.
† None, if disability lasts over 2 weeks.
‡ None, if disability lasts over 1 week.
§ None, if disability lasts over 3 days.
¶ None, if disability lasts over 2 days.

The range of fluctuation is seemingly wide, from no waiting period to thirteen weeks. But in appraising the significance of the long waiting period in Denmark and Sweden, the existence of a voluntary but state subsidized sickness-insurance system must be kept in mind. Membership in this subsidized system is very common in both countries, and while it still remains true that through such a long waiting period industry is relieved from meeting a considerable part of the cost of industrial accidents, the needs of the injured and his dependents are usually met in some way.

With these two exceptions, however, the waiting period is as a rule insignificant. In the twenty-one acts the waiting period is one week in three, four days in two, three days in five, and two days in two; while in seven acts there is no waiting period at all. The average, therefore, excluding the extreme acts of Denmark and Sweden, is only two and one-half days. As noted in Table I, in five of the acts the waiting period is further reduced by modifying

[1] See *Bulletin of the United States Bureau of Labor Statistics*, No. 203, pp. 305–50.

conditions. In Belgium, Austria, Norway, and Netherlands it applies only to the minor accidents, but is waived entirely in all cases extending over the period. In Great Britain the week's waiting period is waived in injuries extending over two weeks. To measure the effect of this provision, the Standard Accident Table may be depended upon.

Of 100,000 tabulatable accidents, complete recovery will take place

Not later than 1 week.....	37,225 cases
Not later than 2 weeks.....	24,019 cases
While all other accidents will number....	38,756 cases

The first group of 37,225 cases comes entirely within the waiting period; the cases of the second group (24,019) will receive compensation only after the expiration of one week; while in the remaining 38,756 cases compensation will be paid referring back to the first day of injury.

Little support in favor of a substantial waiting period is therefore found in European practice. But an entirely different picture is presented by the numerous acts of the British Colonies, passed largely within the last decade.

TABLE II

WAITING PERIOD IN BRITISH COLONIES

Alberta Manitoba New South Wales West Australia	2 weeks
New Foundland New Zealand South Australia Tasmania	1 week, but none if disability lasts over 2 weeks
Nova Scotia* Ontario Quebec Union of South Africa Victoria	1 week
British Columbia† Queensland†	3 days

* Reduced by Act of 1915 from two weeks as established by earlier law.
† Reduced by Act of 1916 from two weeks as established by earlier law.

The average waiting period in these colonies is eight days, or over three times as long as in Europe. Only two colonies have shortened the waiting period as compared with the mother-country. In both the change was comparatively recent, being effected in

1916. In fact, until less than two years ago the average waiting period for these colonies was over ten days, or four times as long as the average for European countries. In three others the provisions of the British Act of 1906 are reproduced; in four the one-week limitation is preserved without any limitations and in six raised to two weeks. This peculiar parsimony of the colonial governments in the field of social legislation would be somewhat difficult to understand if we did not know that the two weeks' waiting period was found in the old Biritish compensation law of 1897—the first enactment into legislation by an English-speaking country of the doctrine of compensation as opposed to that of liability.[1]

It is a curious tendency of colonial life to retain for a long time ideas and standards abandoned by the mother-country. The colonies enumerated on page 251 legislated at various times between 1900 and 1912, but disregarded the home-country standards of 1906 and followed those of 1897. Evidently considerations other than those which governed the waiting period of three or four days in European countries must be held responsible for the colonial standard of two weeks. Taken together with the other provisions of the acts, which place very narrow limits upon the amount of compensation granted, this long waiting period is simply one expression of the effort to keep down the cost of compensation to its lowest possible limits. In the light of the social philosophy of two decades ago in England, this effort need not surprise one. It is decidedly out of harmony with the political tendencies of the present in the American and Australian colonies of the British Empire.

III. AMERICAN COMPENSATION LEGISLATION

For obvious reasons the whole course of American compensation legislation, especially in its earliest stages, was influenced by British rather than Continental standards. As a matter of fact the British Act of 1906 was the final stimulus toward legislative action in this country. But in respect to the provisions concerning the waiting period the British colonial standards proved even more influential.

[1] *Twenty-fourth Annual Report of the United States Commissioner of Labor*, "Workmen Insurance and Compensation Systems in Europe," p. 1502.

TABLE III

State	Year of Enactment	Waiting Period	Waiting Period Waived for Accidents Resulting in—
Alaska	1915	2 weeks	Over 8 weeks of disability
Arizona	1912	2 "	Over 8 weeks of disability
California	1911	1 "	
	1913	2 "	
	1917	10 days	
Colorado	1915	3 weeks	
	1917	2 "	
Connecticut	1913	2 "	
	1915	10 days	
	1917	1 week	
Delaware	1917	2 "	
Hawaii	1915	2 "	
	1917	7 days	
Illinois	1911	1 week	Permanent total disability
Idaho	1917	1 "	
Indiana	1915	2 "	
	1917	1 "	
Iowa	1913	2 "	Dismemberment
	1917	2 "	Over 7 weeks of disability*
Kansas	1911	2 "	
	1917	1 "	
Kentucky	1916	2 "	
Louisiana	1914	2 "	Over 6 weeks of disability
Maine	1915	2 "	
Maryland	1914	2 "	
Massachusetts	1911	2 "	
	1916	10 days	
Michigan	1912	2 weeks	Over 8 weeks of disability
Minnesota	1913	2 "	
	1917	1 "	
Montana	1915	2 "	
Nebraska	1913	2 "	Over 8 weeks of disability
	1917	1 "	Over 6 weeks of disability
Nevada	1913	2 "	Over 8 weeks of disability
	1915	1 "	Over 3 weeks of disability
New Hampshire	1911	2 "	
New Jersey	1911	2 "	
New Mexico	1917	3 "	
New York	1913	2 "	
	1917	2 "	Over 7 weeks of disability
Ohio	1911	1 "	
Oklahoma	1915	2 "	
Oregon	1913	None	
Pennsylvania	1915	2 weeks	
Porto Rico	1916	None	
Rhode Island	1913	2 weeks	
	1917	2 "	Over 4 weeks of disability
South Dakota	1917	2 "	Over 8 weeks of disability
Texas	1913	1 "	
Utah	1917	10 days	
Vermont	1915	2 weeks	
	1917	1 "	

TABLE III—*Continued*

State	Year of Enactment	Waiting Period	Waiting Period Waived for Accidents Resulting in—
Washington	1911	1½ days†	
	1917	1 week	Over 30 days of disability
West Virginia	1913	1 "	
Wisconsin	1911	1 "	Over 1 week of disability
Wyoming	1915	10 days	Permanent disability
	1917	10 "	Over 30 days of disability
United States	1908	15 "	Over 15 days
	1916	3 "	

* This has been accomplished in a very curious way. The amendment of 1917 provides that the compensation during the fifth, sixth, and seventh weeks of disability is increased by two-thirds of the normal compensation, i.e., instead of 50 per cent of wages it rises to 83.33 per cent. During these three weeks therefore the injured receives additional compensation equal to the normal compensation for two weeks (50 per cent $\times\frac{2}{3}\times 3 \div 50$ per cent $= 2$), which is equivalent to abolishing this waiting period. It also means that in case of disability of five weeks' duration the waiting period has been reduced to one and one-third weeks (or nine days) and in case of disability of six weeks' duration to two-thirds of one week or four to five days.

† By interpretation of Insurance Department; act provided "no compensation . . . . unless the loss of earning power shall exceed 5 per cent." The compensation being on a monthly basis, this was interpreted to mean (30 days $\times$ 5 per cent $=$) 1.5 days.

In Table III the provisions of all the compensation acts in regard to the waiting period are given in an alphabetical order of the states. Both the provisions now in force and those superseded by subsequent legislation are shown.

Even a superficial examination of Table III indicates a much greater uniformity in waiting-period provisions than in those concerning medical aid.[1] Two standards, two weeks and one week, predominate, with very few acts deviating from both. Recently the ten-day waiting period has been gaining some popularity, evidently as a compromise.

This uniformity will become more apparent when the acts are arranged according to the waiting-period provision in an ascending scale of liberality (see Table IV). The provisions which have become obsolete are printed in italics.

Of the sixty acts here listed, passed in forty-one jurisdictions, thirty-two have the two weeks' waiting period (twelve, however, having certain minor modifications) and sixteen the one-week period (only five having some modifications). Thus but twelve acts fall outside of these two norms.

[1] See "Medical Benefits under Workmen's Compensation," *Jour. of Pol. Econ.*, June and July, 1917.

TABLE IV

Waiting Period	Exception	Act	Year
3 weeks		*Colorado*	*1915*
3 "		New Mexico	1917
15 days	Accidents over 15 days	*United States*	*1908*
2 weeks		*California*	*1913*
2 "		Colorado	1917
2 "		*Connecticut*	*1913*
2 "		Delaware	1917
2 "		*Hawaii*	*1915*
2 "		*Indiana*	*1915*
2 "		*Kansas*	*1911*
2 "		Kentucky	1916
2 "		Maine	1915
2 "		Maryland	1914
2 "		*Massachusetts*	*1911*
2 "		*Minnesota*	*1913*
2 "		Montana	1915
2 "		New Hampshire	1911
2 "		New Jersey	1911
2 "		*New York*	*1913*
2 "		Oklahoma	1915
2 "		Pennsylvania	1915
2 "		*Rhode Island*	*1913*
2 "		*Vermont*	*1915*
2 "	Dismemberment	*Iowa*	*1913*
2 "	Over 8 weeks of disability	Alaska	1915
2 "	Over 8 weeks of disability	Michigan	1912
2 "	Over 8 weeks of disability	*Nebraska*	*1913*
2 "	Over 8 weeks of disability	*Nevada*	*1913*
2 "	Over 8 weeks of disability	South Dakota	1917
2 "	Over 7 weeks of disability	New York	1917
2 "	Over 7 weeks of disability	Iowa	1917
2 "	Over 6 weeks of disability	Louisiana	1914
2 "	Over 4 weeks of disability	Rhode Island	1917
2 "	Over 2 weeks of disability	Arizona	1912
10 days		*Connecticut*	*1915*
10 "		California	1917
10 "		Massachusetts	1917
10 "		Utah	1917
10 "	Permanent disability	Wyoming	1915
1 week		*California*	*1911*
1 "		Connecticut	1917
1 "		Hawaii	1917
1 "		Idaho	1917
1 "		Indiana	1917
1 "		Kansas	1917
1 "		Minnesota	1917
1 "		Ohio	1911
1 "		Texas	1913
1 "		Vermont	1917
1 "		West Virginia	1913
1 "	Permanent total disability	Illinois	1911
1 "	Over 6 weeks of disability	Nebraska	1917
1 "	Over 30 days of disability	Washington	1917
1 "	Over 4 weeks of disability	Wisconsin	1911
1 "	Over 3 weeks of disability	Nevada	1915
3 days		United States	1916
1½ days		*Washington*	*1911*
None		Oregon	1913
"		Porto Rico	1916

Since the New Jersey law was the first to establish the two weeks' waiting period and Illinois the first to establish the one-week period, one may speak of the New Jersey type predominating, with the Illinois following it. On the whole, the shorter waiting period is found in acts which are more liberal in other provisions as well, though this rule is not without its exceptions.

A study of the waiting periods in relation to the date of the first adoption of the compensation system by the various jurisdictions brings out even a stronger tendency toward the New Jersey standard in most states at the beginning of compensation legislation. Thus twenty-seven out of forty-one jurisdictions began with a two weeks' waiting period. In Table V minor differences are disregarded

TABLE V

New Compensation Acts Passed	Waiting Period Established					Total
	Three Weeks	Two Weeks	Ten Days	Seven Days	Less than Seven Days	
1908	.....	1	.....	.....	.....	1
1911	.....	4	.....	4	1	9
1912	.....	2	.....	.....	.....	2
1913	.....	6	.....	2	1	9
1914	.....	2	.....	.....	.....	2
1915	1	8	1	.....	.....	10
1916	.....	2	.....	.....	1	3
1917	1	2	1	1	.....	5
	2	27	2	7	3	41

and the fifteen days' waiting period of the United States act of 1908 is included. Nor is there any noticeable tendency for the more recent acts to begin with a more liberal scale than the older acts.

In fact, almost the opposite conclusion may be arrived at, for of the ten states which began with a waiting period of seven days or less, eight did so in 1911–13, and only two in 1914–17. Both acts with a three weeks' waiting period fall in the latter period.

But a very different impression is obtained when the changes in existing acts are studied. "Probably no other feature of compensation laws is considered and debated more than the waiting period," says an official investigator.[1]

[1] *United States Bureau of Labor Statistics*, Bulletin 203, p. 85.

A large number of amendatory acts covering the waiting period are being introduced at almost every session of the numerous state legislatures, and a substantial number of changes have already been accomplished, as Table VI shows.

TABLE VI

1913, California	increased	the	waiting	period	from	1	week	to	2	weeks
1915, Connecticut	reduced	"	"	"	"	2	weeks	"	10	days
1915, Nevada	"	"	"	"	"	2	"	"	7	"
1916, Massachusetts	"	"	"	"	"	2	"	"	10	"
1916, United States	"	"	"	"	"	15	days	"	3	"
1917, California	"	"	"	"	"	2	weeks	"	10	"
1917, Connecticut	"	"	"	"	"	10	days	"	7	"
1917, Hawaii	"	"	"	"	"	2	weeks	"	7	"
1917, Indiana	"	"	"	"	"	2	"	"	7	"
1917, Iowa	waived	"	"	"	after	7	"	of	disability	
1917, Kansas	reduced	"	"	"	from	2	"	to	2	days
1917, Minnesota	"	"	"	"	"	2	"	"	7	"
1917, Nebraska	"	"	"	"	"	2	"	"	7	"
	also reduced the period after which the waiting period is waived entirely from 8 weeks to 6 weeks.									
1917, New York	waived	the	waiting	period	after	7	weeks	of	disability	
1917, Rhode Island	"	"	"	"	"	4	"	"	"	
1917, Vermont	reduced	"	"	"	from	2	"	to	7	days
1917, Washington	increased	"	"	"	"	1.5	days	"	7	"

The increases of the waiting period are, therefore, very exceptional. In both California (1915) and Washington this has evidently been done "to allow other benefits." The current legislative year brought a regular avalanche of such changes with a decided tendency to substitute seven days for two weeks. The most striking change, however, was that effected by the Federal Employees Compensation act of 1916, which established a three days' waiting period for the fifteen days of the earlier act. It is reasonable to assume that this act, sponsored by the Social Insurance Committee of the American Association for Labor Legislation, has had a very strong influence upon the legislation of 1917, which as a matter of fact was the paramount purpose of that Association in preparing the Kerr-McGillicudy act as a model law. A very decided change in the average waiting period is evidenced by a

comparison of the legislation in force at the end of 1915 with that at the end of 1917 (see Table VII).

TABLE VII

Waiting Period	Number	
	End of 1915	End of 1917
Over 2 weeks	2	1
2 weeks	22	18
10 days	2	4
7 days	6	15
Under 7 days	2	3
	34	41

Nevertheless the two weeks' waiting period, with minor modifications in a few cases, still persists in eighteen states, or nearly one-half of the total number having compensation laws.

Of course the uniformity is not so great as far as the detailed provisions are concerned, many differences being due to a difference of wording, which was perhaps unintentionally introduced. But after all the waiting-period provision is simple and the limits of variation not very wide.

One variation represents the obverse of the condition found in connection with the provisions regarding medical aid. The acts speak of "the two weeks after the accident" and "the first two weeks of disability," as if these were interchangeable concepts, which they are not, except when the injury is severe and obvious and is followed immediately by disability. If the disability develops later and as a result of some change in conditions, the waiting period in many states may be substantially reduced or nullified. This fine distinction in verbiage, probably unintentional in most cases, deprives many a case of its needed medical aid. And, vice versa, it may benefit many injured as far as compensation is concerned. Thus, for instance, in New Jersey a workingman who receives a slight injury of hand, which does not incapacitate him for the time but becomes infected a few weeks later, would not be affected by the waiting-period provision (though he would lose his right to medical aid), because the New Jersey provision

reads: "No compensation should be allowed for the first two weeks after injury received." This would at least be the result of an accurate interpretation of the language of the law, and the same language is used in many other acts.[1] In a larger number of cases, however, the language more appropriately refers to the first week or two of disability.

Another technical point is involved in the definition of the word "disability" as applied to the duration of the waiting period. In most accidents leading to permanent results though of a partial character, some period of total disability, usually extending beyond the waiting period, precedes the determination of permanent results. It is not impossible for a minor amputation (e.g., of a finger or two) to result in a very quick recovery and return to work, though at lower wages. According to the Connecticut act (which language is practically repeated in a number of other states, as Arizona, Iowa, Kansas, Maine, Massachusetts, Michigan, Nevada, Rhode Island, Texas) the waiting period is defined as embracing the specified week (or two weeks) during which the injured is incapacitated from earning "full wages," the formula thus including partial disability. In other states there is no definition of disability at all in this connection, partial disability being included by implication with total disability.

In studying the limitations placed upon medical practice it was found that even the severe limitations affected only a comparatively small proportion of all industrial accidents.[2] The effect of the waiting period is evidently broader. Generally, it affects all injured persons except those fatally injured, whose death is almost instantaneous and whose compensation is computed on an entirely different basis.

In cases of dismemberment we find other limitations in force which practically neutralize the effect of the waiting-time limitation. But outside of these two groups of accidents (fatal cases 932 out of 100,000 and dismemberments 2,300 out of 100,000,

[1] Louisiana, Minnesota, Montana, New Hampshire, New Jersey, Ohio, West Virginia.

[2] See "Medical Benefits under Workmen's Compensation," *Journal of Political Economy*, XXV (June, 1917), 602–4.

according to the Standard Accident Table) all the others, 97,568, or 97.5 per cent of the injured, are affected by it though to a varying extent—those falling wholly within the waiting time losing their entire compensation, and those extending beyond the waiting period losing a part of it, which becomes smaller proportionally as the total compensation grows larger. An exception is made, as already indicated, of certain grave accidents in those states where benefits revert to the day of the injury in case the disability extends beyond a specified period.

In order to determine the number of accident cases entirely deprived of compensation (except the cost of medical aid) Table VIII is given, which quotes data from the Standard Accident Table.

TABLE VIII

Duration of Total Temporary Disability	Cases of Temporary Disability Only	Cases Eventually Developing into Permanent Partial Disability	Total
1 week or less	37,225	139	37,364
1–2 weeks	24,019	137	24,156
2 weeks or less	61,244	276	61,520
2–3 weeks	12,145	144	12,289
3 weeks or less	73,389	420	73,809
3–8 weeks	17,072	864	17,936
8 weeks or less	90,461	1,284	91,745
Over 8 weeks	3,732	1,158	4,890
Total cases	94,193	2,442	96,635
Total permanent disability	.....	.....	133
Total Dismemberments	.....	.....	2,300
Total Fatal	.....	.....	932
Total	94,193	2,442	100,000

In New Jersey and all the numerous states of the same category, therefore, 61.5 per cent of all accidents receive no compensation at all, while 35.1 per cent lose it for two weeks. In Colorado the number of cases without compensation rises to 73.8 per cent. In Illinois, Ohio, etc., where one week's waiting period prevails, the percentage is only 37.4 per cent. In Alaska, Michigan, Nebraska,

and South Dakota less than 5 per cent outside of the fatal and dismemberment cases receive their full compensation. In Connecticut, the waiting period being ten days, the number of cases within that period has by interpolation been determined at about 50 per cent.

Investigation shows that the percentage of loss varies in inverse ratio to the duration over the first two weeks. If the injured person returns on the sixteenth day, for instance, he receives one-fifteenth of the benefits to which he would otherwise have been entitled.[1]

IV. CRITICISM OF AMERICAN LEGISLATION

It is evident that there is a substantial loss to most of the injured and an apparent saving to the employer in the retention of the old English waiting period which was discarded in England over ten years ago. The individual and social justice of this saving will be considered presently. But an actual quantitative computation of this saving is evidently necessary. At the time most compensation laws were adopted there were no scientific methods of computing compensation rates or estimating the cost of distinct benefit features of the compensation acts. All was conjecture, hypothesis, and judgment. The evident fact that a substantial waiting period excluded a majority of cases easily created the impression that it saved a large proportion of the cost.

With the introduction of the Standard Accident Table and the scientific methods of rate-making in the summer of 1914, a fairly accurate estimate of the saving thus effected became possible. The computation of this estimate is shown in Table IX. Excepting

[1] If d be defined as the duration of disability in weeks and the weekly benefit is w, then the loss is equal to $2w$ and the benefit in the absence of a waiting period would be dw. The proportion of loss through the waiting period is $\frac{2w}{dw}=\frac{2}{d}$, the amount actually received is $(d-2)w$; the proportion of the amount received to the amount that would be due without a waiting period is $\frac{(d-2)w}{dw}=\frac{d-2}{d}=1-\frac{2}{d}$. The larger the value of d the smaller is $\frac{2}{d}$ or proportion of loss; and the larger is $1-\frac{2}{d}$ or the proportion received. With $d=4$ the loss is 50 per cent; with $d=8$ the loss is 25 per cent; with $d=13$, the loss is over 15 per cent and still substantial; and it is well to remember that 93 per cent of all accidents are cases of temporary disability not extending over thirteen weeks.

TABLE IX

Duration	No. of Cases	Average Duration in Weeks	Total Duration in Weeks	Under Waiting Period of One Week		Under Waiting Period of Two Weeks		Under Waiting Period of Two Weeks, Except for Cases of Over Eight Weeks	
				Average Compensation Time in Weeks	Total Compensation Time in Weeks	Average Compensation Time in Weeks	Total Compensation Time in Weeks	Average Compensation Time in Weeks	Total Compensation Time in Weeks
Under 1 week	37,496	0.5	18,748	.....	.....	.....	.....	.....	.....
1– 2 weeks	24,286	1.5	36,429	0.5	12,143	.....	.....	.....	.....
2– 3 "	12,426	2.5	31,065	1.5	18,639	0.5	6,213	0.5	6,213
3– 4 "	7,313	3.5	25,595	2.5	18,282	1.5	10,969	1.5	10,969
4– 5 "	4,823	4.5	21,704	3.5	16,881	2.5	12,058	2.5	12,058
5– 6 "	3,040	5.5	16,720	4.5	13,680	3.5	10,640	3.5	10,646
6– 7 "	2,081	6.5	13,526	5.5	11,445	4.5	8,364	4.5	8,364
7– 8 "	1,592	7.5	11,940	6.5	10,348	5.5	8,756	5.5	8,756
8– 9 "	1,249	8.5	10,616	7.5	9,367	6.5	8,118	8.5	10,616
9–10 "	834	9.5	7,923	8.5	7,089	7.5	6,255	9.5	7,923
10–11 "	668	10.5	7,014	9.5	6,346	8.5	5,278	10.5	7,014
11–12 "	540	11.5	6,210	10.5	5,670	9.5	5,130	11.5	6,210
12–13 "	476	12.5	5,950	11.5	5,474	10.5	4,998	12.5	5,950
13 and over	2,034	19.0	43,776	18.0	41,474	17.0	39,168	19.0	43,776
Total	98,958	.....	255,216	.....	176,836	.....	125,947	.....	138,489

the fatal and permanent total disability cases (932+110=1,042), the remaining 98,958 have a period of temporary total disability; 4,765 cases lead eventually to partial disability due to dismemberment or other conditions, while the remaining 94,193 result in complete recovery. But this distinction is immaterial in this connection.

The method of computation used in the table is self-evident. The assumption of the mean between the limits in each group as the average duration of a case of that group is not quite accurate. Since the series is a descending one, the average is probably nearer to the lower limit. But the inaccuracy thus introduced in view of the narrow limits is not a great one. For cases extending over thirteen weeks the average duration of nineteen weeks (not including the consequent partial disability) was assumed on the basis of voluminous European experience. The method is convenient because it permits of easy determination of any other variation in the waiting-time provision.

The computations refer to time only, since that is the decisive factor of compensation in temporary cases. Whatever the weekly compensation, whether 50, 60, or 66⅔ per cent of the wages, the proportionate effect of the waiting time would be the same.

A waiting period of one week reduces the total compensated time and therefore the cost of compensation from 255,216 to 176,836 weeks, or 30 per cent; a waiting period of two weeks, to 125,947 weeks, or 50 per cent; a waiting period of two weeks with the "eight-week" modification, to 138,489 weeks, or 46 per cent. Reversing the relationship we may say that the reduction of the waiting period from two weeks to one week would increase the cost of the weekly benefit for total temporary disability by 40 per cent; the entire abolition of the waiting period would more than double it. The limitation of a waiting period of two weeks to only the cases not extending over that period, would increase the cost by 59 per cent. The reduction of the waiting time to one week only, and its further limitation to those cases under one week, would increase the cost by 88 per cent.

The effect of other modifications would fall within these extreme limits.

The comparisons are impressive. They indicate the substantial loss of compensation sustained through this provision. But if the effect of this upon the total cost of compensation is to be ascertained it must be remembered that in addition to weekly benefits the medical aid must be paid for, and that it is the remaining few cases of death, dismemberment, and permanent disability that constitute the larger part of this cost. The relation between the cost of temporary disability and the total cost of compensation must naturally vary with the various benefit scales of the compensation act. But without going into actuarial subtleties, it may be stated in a general way that the weekly benefits for total temporary benefit constitute only about 10 to 15 per cent of the total cost under a two weeks' waiting period. The increase of this item of cost by 50 per cent will not increase the entire cost over that of the present laws by more than from 5 to $7\frac{1}{2}$ per cent. Doubling the cost of compensation for temporary disability increases the total cost of the compensation by 10 or 15 per cent.

But what does that difference represent in actual dollars and cents? This is most likely the form in which the question will be asked. The actual difference will evidently depend upon the degree of hazard of each industry, since the present cost in some states differs from 10 cents to $15 or $20 per $100 pay-roll. Taking industry as a whole, however, the following information is significant. When a conference of insurance companies and state officials was revising the compensation rates in the spring of 1917, a substantial volume of experience was available for eleven states, amounting to a total pay-roll of $4,341,544,786, on which the losses were $22,827,282, or only 53 cents per $100.

By states this experience was distributed as is shown in Table X.[1]

Evidently an increase of the cost by 5 to 10 per cent would not mean more than an additional charge of 2 to 5 cents per $100 of pay-roll, scarcely a substantial consideration.

That the waiting period, whatever its purposes, in reality serves to reduce substantially the restitution of loss sustained—

[1] H. E. Ryan, "Revision of Workmen's Compensation Rates," *Proceedings of Casualty Actuarial and Statistical Society of America*, III, 175.

already reduced by the adoption of a limited benefit scale—is quite obvious.

To meet this charge several acts have embodied the modification already referred to above, making the compensation for the waiting period payable after the disability has lasted a certain length of time. This change is based upon the consideration that in accidents of a certain severity there can be no charge of malingering. In Michigan, Nebraska, and South Dakota the waiting time is waived when the duration of disability extends beyond the eighth week. Other applications of this principle appear in Tables III and IV. A still more striking example of this method is found in the Federal Employees Compensation Act of 1908 (since superseded by the Act of 1916, in which this vicious feature was abolished) which gave no compensation whatever if disability lasted fifteen days or less but waived the waiting period altogether and paid full wages for the entire time lost if disability exceeded that period.

TABLE X

	Pay-Roll (000's Omitted)	Losses	Losses per $100 of Pay-Roll
California	$ 209,963	$1,498,126	71 cents
Connecticut	87,948	394,586	45 "
Illinois	477,726	2,982,212	62 "
Iowa	36,451	164,078	45 "
Massachusetts, old law (1912)	1,212,533	4,755,663	39 "
Massachusetts, new law (1914)	367,469	1,958,867	54 "
Michigan	298,665	1,780,423	60 "
Minnesota	85,167	513,115	60 "
New Jersey	326,827	1,376,179	42 "
New York	1,131,305	6,574,951	58 "
Rhode Island	26,751	159,255	60 "
Wisconsin	85,741	669,827	78 "

It is obvious that as far as even elementary justice is concerned this provision was illogical, to say the least. If the ostensible purpose of the waiting period is to eliminate malingering the retroactive clause produces a directly opposite effect and must offer a direct encouragement to the exaggeration of injuries, for it makes the extension of the disability beyond a certain limit a matter of definite advantage, sometimes of very large advantage, to the injured.

As this advantage was greatest under the old Federal act, the effect there must have been strongest, and eloquent data are available to substantiate the charge. An employee of the United States government who has been injured in the course of his employment and returned to work before the expiration of the fifteenth day has lost his wages for the entire time of his disability, perhaps as much as two weeks. By staying over until after the beginning of the sixteenth day he might regain every cent of wages lost. If one day's extension of disability was worth anywhere from $25 to $75, how much moral courage was necessary to return to work on the fifteenth, the fourteenth, or the thirteenth day? How much stretch of conscience did it require for the injured workman or even for his physician, when made aware of the circumstances in the case, to reason that another day or two in bed or at home would facilitate convalescence or complete recovery?

What was the result? The distribution of accidents to United States government employees outside of the Isthmian Canal Commission, to whose employees this provision did not apply, is given in Table XI. The table shows the duration of disability as compared with that disclosed by the Standard Accident Table.[1]

TABLE XI

	United States Employees 1908–13		Standard Accident Table
	Number	Percentage	Percentage
7 days or under	5,428	26.7	37.5
Over 7 but under 15	2,695	13.3	28.3
" 15 " " 21	3,169	15.6	12.4
" 21 " " 28	2,381	11.7	7.3
" 28 and all others	6,662	32.7	14.5
	20,335	100.0	100.0

Failure to report many accidents of less than seven days' duration produces an entirely different distribution for the United States employees than that in the Standard Accident Table. But nevertheless the effect of increasing the accidents falling in the

[1] *Bulletin of the United States Bureau of Labor Statistics*, No. 155, pp. 54–55, "Compensation for Accidents to Employees of the United States."

third group (fifteen to twenty-one days) is clearly noticeable. It is the universal experience (reflected in the Standard Accident Table) that the number falling into each duration group decreases very rapidly. But among the employees of the United States government there were 18 per cent more accidents lasting from fifteen to twenty-one days, than of those lasting from seven to fifteen days. In view of the peculiar provision of the law the explanation is obvious. The situation appears still worse when the development of this tendency is studied (see Table XII).

TABLE XII

Duration of Disability	Number of Accidents Occurring in—				
	1908–9	1909–10	1910–11	1911–12	1912–13
Over 7 but not over 15 days...	371	530	491	601	692
Over 15 but not over 21 days..	371	538	584	744	940

The distribution of the accidents of over seven and under twenty-one days between the two groups was therefore the result given in Table XIII.

TABLE XIII

PERCENTAGE OF ACCIDENTS

	Standard Accident Table	United States Employees				
		1908–9	1909–10	1910–11	1911–12	1912–13
Over 7 but not over 15 days	69.5	50.0	49.5	45.7	45.0	42.4
Over 15 but not over 21 days.....	30.5	50.0	50.0	54.3	55.0	57.6

Here is a striking illustration of the pernicious effect which the best-intended legislation may produce when drafted by unskilled hands.

In the case of Michigan, Nebraska, or South Dakota the effect cannot be so glaring for it touches only the graver injuries with many weeks' disability preceding the turning-point. But it is not unreasonable to assume that injuries which normally should last seven weeks or so will be similarly affected. By carrying the disability over the entire eighth week, the injured will lose

one week's earnings but will receive compensation for the eighth week as well as for the first two weeks, i.e., he stands to gain half of one week's wages by taking an additional week's rest. A subtle motive for exaggerating one's symptoms is thus created.

Both theory and practice produce therefore very weighty arguments against the inclusion of any retroactive clause. The objections to an excessive waiting period must be met by cutting it down all along the line. Admitting that the effect of the waiting period is to make a substantial inroad into compensation for wage loss sustained, what are the social results?

Admittedly the loss of one or even two weeks' wages is not a calamity. If Mr. Lott's theory of a limited compensation fund be accepted, then it would be true that by eliminating the smaller misfortunes you leave your fund for use in alleviating real distress—permanent injuries and the like—instead of dissipating it for comparatively inconsequential injuries. "To be laid up for a month is a misfortune, but not a real calamity. If the fund is taken up for misfortunes there is nothing left for calamities."[1]

From this point of view Mr. Lott's objection to reducing the waiting period from two weeks to one is eminently logical. As a matter of fact the subconscious idea and even the definitely expressed theory of a limited compensation fund has had some influence upon legislative action. At least two illustrations of this may be quoted.

In California the benefit schedule of the early elective Rosebery act was thoroughly revised in the compulsory Boynton act of 1913. In this revision the one week's waiting period was increased to two weeks—perhaps the only case of a definite reduction in benefits through amendment. This was defended upon the ground of necessity for more liberal treatment of the graver accidents. In advocating this change the board stated:

> By reducing the compensations paid for disabilities rated at less than 60 per cent of impairment of the efficiency of the human machine to the real requirements of persons so disabled, and by raising the waiting period from one week to two weeks before any compensation at all shall be paid, enough is saved to cover the cost of the life pension.[2]

[1] E. L. Lott, *Which Will Be Best for the Workman?* p. 124.

[2] *First Report of the Industrial Accident Board of the State of California*, September, 1911—December 31, 1912, p. 35.

In Colorado, after many years of political discussion, a compensation act was finally passed in the spring of 1915. The scale of benefits is extremely limited. In the form introduced in the legislature the bill provided that the wages upon which compensation must be computed must not be assumed to exceed $750 per annum. This would produce a maximum weekly wage of $14.42 and (with a 50 per cent benefit scale) a maximum benefit of $7.21. This unusual subterfuge for cutting down the cost called forth such severe criticism[1] that the bill was amended by increasing the maximum weekly benefit to $8.00, but to provide for this increase in one direction the cost was cut in another direction by an increase of the waiting period from two weeks to three.

But after all, the theory of a limited fund is only true *after* the act has been adopted, and the size of the fund varies extremely in different states. The accepted cost of the New York Compensation act is two and one-half times and perhaps three times as high as that of the Kansas act. It is doubtful whether any student of compensation would accept the theory that it is intended to meet calamities only, even to the exclusion of ordinary misfortune. Surely that would not be acceptable to the millions of workingmen, nor to the student of social conditions who looks forward to compensation as one of the remedies for poverty and a substitute for poor relief. The loss of two weeks' wages is not a calamity. It occurs frequently as a result of unemployment or sickness. But just because of this frequency it almost always produces a serious disarrangement in the economics of the wageworker's family. In thousands and perhaps millions of such families this economic equilibrium is so unstable that the loss of two weeks' wages very frequently is the final cause of very much suffering, some disease, and perhaps a general breakdown of the basis of economic independence which the first appeal to charity relief often brings about.

For it must not be forgotten that industrial accidents do not occur when the worker is suffering from unemployment; many a worker's family endeavors to adjust itself to the ordinary hazard of irregular employment. The loss of time from an industrial injury cuts into the busy time of the year, during which the surplus necessary to meet unemployment must be earned.

[1] See the *Survey*, March 13, 1915, p. 659.

The majority of wageworkers live from hand to mouth and depend upon the weekly pay envelope. Saturday night is a busy shopping time because at that time funds for making purchases are available. Too much reliance is often placed upon the wageworker's savings-bank account. The average size of this as popularly computed by a simple arithmetical division seems to exceed $500. But it was recently shown upon the basis of the scanty data available[1] that even in thrifty Connecticut four-fifths of the depositors have less than $200 each and the average deposit in that class is only a little over $100. Even when such a reserve fund exists its breakdown for the purpose of covering the loss of wages due to an industrial injury is undesirable. Besides, as will be shown in a subsequent study, it must generally be drawn upon to supplement compensation.

As Dr. Chapin showed, even ten years ago the task of making both ends meet was too severe to be successfully accomplished in ordinary circumstances on all incomes under $800,[2] and among families with incomes from $600 to $1,100 only one-third showed any surplus at all while over a fourth showed a deficit. A sudden and unexpected interruption of income does not necessarily mean actual starvation of the family, but it does mean either debts or a breakdown of standards, or the excision of such unusual expenditures as the purchase of some necessary clothing. These data refer to 1907; since then the cost of living has increased perhaps 50 per cent.

But there is in addition frequently an indirect effect which is not usually taken into account. A slim little Irish furniture mover, after carrying heavy boxes of books into the writer's apartment for hours and hours, finally sat down to rest, apologizing for his exhaustion by pointing at his bandaged ankle, a result of an injury sustained a few days previous. There is no doubt that he should have been resting instead of working as hard as he did, and he had been so instructed by his physician. He knew all about his rights under compensation, but he also knew that his wife and

[1] I. M. Rubinow, *Social Insurance*, pp. 41–43.

[2] R. C. Chapin, *The Standard of Living among Workingmen's Families in New York City*, p. 234.

child could not afford to go along without wages for two weeks, and this was October, the busy season. He was moving things from 4:00 A.M. until midnight and could not take time off to go to his doctor, let alone remain at home in idleness. Now that he was resting he winced with pain; and who can tell what grave consequences to his ankle this failure to nurse his first injury may have meant?

The popularity of the two weeks' waiting period which, notwithstanding the many changes, still persists in half of the states is largely to be charged to the early students of compensation who represented employing and insurance interests, especially the latter. The following statement by Mr. Lott, president of a large casualty insurance company and a prolific writer on compensation, made in 1913, is significant: "I have discussed this question with a large number of gentlemen who have given workmen's compensation laws in this country and in other countries intelligent study, and not one of them has seriously considered a waiting period of one week as against two weeks."[1]

At the Chicago Conference of Commissions on Compensation for Industrial Accidents, held in November, 1910, when the standards had been adopted which went largely into the make-up of the New Jersey act, the two weeks' waiting period was unanimously adopted, and practically without discussion.[2] As already shown, the only question raised concerned the possibility of increasing it to three weeks for the purpose of providing the cost of medical aid—another application of the "fund" idea.

In the draft of standards issued by the Workmen's Compensation Department of the National Civic Federation four years later, the same standard of two weeks still prevailed.[3]

Mr. M. D. Alexander as recently as 1915 advocated a two weeks' waiting period on the ground that it would materially reduce the

[1] Lott, *Which Will Be Best for the Workman?* p. 124.

[2] *Proceedings of Conference of Commissions on Compensation for Industrial Accidents*, held at Chicago, November 10, 11, and 12, 1910 (pp. 99–101).

[3] *Second Tentative Draft*, memorandum of suggestions upon main provisions requisite to an adequate compulsory workmen's compensation law. Issued by the National Civic Federation through its Workmen's Compensation Department, August Belmont, Chairman, 1914.

financial burden placed upon the employer[1] as well as because of the "influence of a waiting period without compensation upon the tendency to malinger," and because "it would be practically impossible to give each of the thousands of cases that would arise such careful investigation as to judge correctly the injured's claim of unfitness for work." The same standard was accepted by the Conference of Commissioners on Uniform State Laws in 1913.[2]

But signs of objections to this long waiting period very soon manifested themselves. It was admitted by Alexander that the demands of many employees for a short waiting period or for none are loud and persistent.[3] The American Association for Labor Legislation recommended a waiting period of "not less than three nor more than seven days."[4]

The Standards of the Progressive National Service demanded the reduction of the waiting period to "the first three days of disability" with the comment that there is no adequate reason for a longer period than the one here recommended.[5]

On the other hand, the workmen's attitude to the waiting period soon became unmistakably one of serious opposition and irritation. It may be said that the average workingman is inclined to overemphasize it for the sufficient reason that of all the shortcomings of an inadequate compensation scale this one is most frequently brought to his attention. More criticism is therefore directed against this feature than even against the very much more serious inadequacy of the scale in total permanent disability or death.

Even Alexander is willing to admit that at some future time this period could be reduced to one week and it might eventually

[1] Magnus W. Alexander, *What Shall Be the Principal Provisions of a Workman's Compensation Act?* 1915, p. 13.

[2] Conference of Commissioners on Uniform State Laws, 1913. Second Draft of Uniform Workmen's Compensation acts as tentatively approved at the Conference held in August, 1913.

[3] Alexander, *op. cit.*, p. 13.

[4] Standards of Workmen's Compensation Laws.

[5] "Standards of Workmen's Compensation," prepared for the Committee on Social and Industrial Justice of the Progressive National Service.

be reduced even further if effective means for counteracting the disadvantages arising from such steps could meanwhile be found and applied.[1]

The problem of malingering, which Alexander advanced as the main argument against abolition of the waiting period,[2] is a complicated one and somewhat beyond the scope of this study. It is obvious, however, that the only effective method of control of this evil (whose dimensions are often unnecessarily exaggerated) lies in a better organization of medical control. Frequently back of the malingering person stands a dishonest or complacent physician whose economic interests depend upon indulgence of, and often connivance with, the injured. Nothing will so effectively make for proper medical control as a substitution of a medical organization for the present dispensation of medical aid on commercial principles.

In general it must be admitted that an increase in benefits must carry with it an increase in cost. In that relationship necessarily lies all the difficulty of raising benefits up to the standard level. But it has already been substantially proved what a slight charge upon industry compensation needs to be. If because of a faulty and extravagant organization of compensation insurance the gross cost is nearly twice as large as the net cost, then the efforts for economy should go in that direction, and not in the direction of depriving the wageworker of the compensation to which he was frequently entitled, even under the old liability conditions.

Judging by the results of the onslaught in 1917 the seven-day period is destined to conquer. But the battles are still to be fought out in the most important industrial states. The history of the waiting period, the early errors, and their gradual elimination merely offers additional evidence of the necessity of intelligent and watchful co-operation of labor in every act of labor legislation.

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[1] Alexander, *op. cit.*, p. 14.

[2] See also P. Tecumseh Sherman, *Notes on Malingering under Workmen's Compensation Laws.* A Leaflet. 16 pages, 8vo.